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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Ronald Nordquist

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/798,243	Applicant(s) NORDQUIST, RONALD	
	Examiner Steven B. Pollicoff	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18,21-24 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,21-24 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/28/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,7,8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Leaphart (U.S. Pat. No. 4,714,353).

As to Claims 1 and 9, Leaphart discloses a collection container with a collection body (Leaphart Fig. 1) comprising a plastic porous composition (Column 1, lines 37-42) and a removably coupleable cap (Fig. 1, reference number 11) configured to allow a substantially free flow of fluid therethrough (column 2, lines 61-65).

As to Claims 2, Leaphart discloses that the collection body and the cap are substantially cylindrical (Fig. 1 generally).

As to Claim 7, Leaphart discloses that the collection body and cap have shapes that are substantially similar (Fig. 1 generally).

As to Claim 8, Leaphart discloses that the collection body and cap shape is circle, a shape from the group consisting of square, rectangular, triangular, oval, hexagonal, polygonal, rhombus, parallelogram, and circle.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-6, 11-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaphart (U.S. Pat. No. 4,714,353) in view of Kemp (U.S. Pat. No. 5,161,681).

As to claims 3-6 and 14-17, Leaphart discloses all of the limitations above in claim 1 except that the cap body has a substantially non round external outline (i.e. square, triangular, or hexagonal outline). However, Kemp discloses a cylindrical collection container with a square body cap (see Kemp Fig. 7) and that the cap can be any desirable shape that possesses flat surfaces (see Kemp Column 3, Paragraph 1, Lines 11-14) to assist in preventing rolling. Therefore, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify Leaphart to include square, triangular, or hexagonal caps since such a modification would have involved a mere change in the shape of the cap and since there is no indication that a change in shape affects any critical design or functional

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element of the container. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669,149 USPQ 47 (CCPA 1966).

As to claims 11 and 18, Leaphart as described above discloses all the limitations of the claims except for comprising a second opening defined at the second end of the container nor does Leaphart disclose a second cap interchangeably removably coupleable with the second end. However, Kemp discloses a second opening at a second end of the container with an interchangeable removably coupleable second cap (Kemp Fig 1 reference number 18). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the container of Leaphart to include a second opening at the second end with a second cap, as taught by Kemp, for the purpose of more easily removing or inserting a medical instrument (column 4, lines 52-58).

As to claims 12 and 13, Leaphart discloses that the porous composition is plastic mesh (Column 1, lines 37-42) and that the first and second ends are substantially cylindrical (Fig. 1 generally).

As to claim 21, Kemp discloses that the first and second caps comprise a solid composition (Kemp column 5, lines 30-34).

Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaphart (U.S. Pat. No. 4,714,353) as applied to claim 1 above and further in view of Linder (U.S. Pat. No. 3,468,471).

As to claims 10 and 22, Leaphart discloses all of the limitations except that the container is packaged in sterile packaging. However, Linder discloses a sterile package

for storing medical articles and maintaining them in a sterile condition (Linder column 1, lines 28-33). Therefore, it would have been obvious to someone of ordinary skill in the art at the time of the invention to provide a sterile packaging, as taught by Linder, to the collection container of Leaphart to maintain sterility and prevent bacteria exposure of the container until use of it is necessary.

As to claim 23, Leaphart does not disclose that the collection container comprises a first and second opening defined at the first and second end of the container nor does Leaphart disclose first and second caps interchangeably removably coupleable with the first and second ends. However, since Leaphart does disclose a first opening at a first end with a first interchangeably removably coupleable cap, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place a second opening with a second interchangeably removably coupleable cap at the second end of the collection container, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.* 193 USPQ 8.

Claims 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaphart (U.S. Pat. No. 4,714,353) in view of Linder (U.S. Pat. No. 3,468,471) as applied to claim 22 above and further in view of Kemp et al., (U.S. Pat. No. 5,161,681).

As to claim 23, Leaphart and Linder disclose all of the limitations above in claims 22 except for comprising a second opening defined at the second end of the container nor does Leaphart disclose a second cap interchangeably removably coupleable with the second end. However, Kemp discloses a second opening at a second end of the

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container with an interchangeable removably coupleable second cap (Kemp Fig 1 reference number 18). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the container of Leaphart to include a second opening at the second end with a second cap, as taught by Kemp, for the purpose of more easily removing or inserting a medical instrument (column 4, lines 52-58).

As to claim 27, Leaphart and Linder disclose all of the limitations above in claims 22 and 23 except that the cap bodies have substantially non round external outlines (i.e. square, triangular, or hexagonal outline). However, Kemp discloses a cylindrical collection container with a square body cap (see Kemp Fig. 7) and that the cap can be any desirable shape that possesses flat surfaces (see Kemp Column 3, Paragraph 1, Lines 11-14) to assist in preventing rolling. Therefore it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify Leaphart/Linder to include square, triangular, or hexagonal caps since such a modification would have involved a mere change in the shape and since there is no indication that a change in shape of the cap affects any critical design or functional element of the container. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669,149 USPQ 47 (CCPA 1966).

Response to Arguments

4. Applicant's arguments with respect to claims 1-18,21-23 and 27 have been considered but are moot in view of the new ground(s) of rejection above.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4/14/06
SBP


JILA M. MOHANDESI
PRIMARY EXAMINER